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UNCLAS SECTION 01 OF 04 TUNIS 001818

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STATE PASS TO USTR (BELL)  
STATE FOR NEA/MAG (HARRIS), EB/IPE,  
USPTO (ADLIN AND POGODA)  
USDOC FOR ITA/MAC/ONE (ROTH) AND CLDP (TEJTEL)  
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SUBJECT: IPR PROTECTION IN TUNISIA

REF: TUNIS 1590

**¶1.** SUMMARY: Tunisia has taken significant steps to strengthen its intellectual property rights (IPR) enforcement throughout 2005 and 2006. There has been a noted change in attitude towards IPR among Tunisian officials, legal experts, and businesses. They now consider IPR not only as a legal tool for the protection of a product but also an incentive to stimulate economic development. The GOT has launched a campaign to expand IPR awareness and to fight counterfeiting and piracy. On May 29, 2006, in observance of National Culture Day, President Ben Ali ordered the updating of the copyright law 1994-36 concerning literary and artistic copyrights. New legislation currently before Parliament seeks to grant enhanced authority to the Tunisian Copyright Authority, (Organisme Tunisien de Protection des Droits d'Auteurs - OTPDA). There has been a notable increase in the number of media reports on problems related to counterfeit products available in the country's markets. This has led the GOT to take a proactive legal position on IPR for the first time, and to instruct local authorities to give Customs officials greater authority to seize counterfeit products without requiring a prior complaint by the patent holder.  
END SUMMARY.

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Upgrade of the Legal Framework  
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**¶2.** President Ben Ali's May 29 decision to update the law on literary and artistic copyrights (1994-36) is a signal to foreign investors and to Tunisian enterprises that the GOT is serious about strengthening and enforcing its IPR regime. The USG has advocated for significant reform and stronger enforcement of existing IPR laws, and potential investors both foreign and domestic criticized Tunisia's lack of IPR enforcement. As a consequence of this pressure, the GOT has taken steps to improve its IPR regime.

**¶3.** In 2005, Tunisian ministries of Interior, Commerce, Finance, Health, and Industry decided to coordinate their efforts in order to crack down on the parallel market and its suppliers. They drew up a national plan called "drying up the sources," which tasked the relevant ministries with proactively enforcing current IPR laws. Circulars were issued that explained the steps to be followed when carrying out enforcement actions. In conjunction with this national plan, the Ministry of Commerce has embarked on a campaign to dedicate the necessary human resources and equipment to

enable customs to focus on IPR enforcement. The GOT is also working on an amendment to its Customs laws. According to official sources, this amendment will give customs officials greater authority to respond effectively to IPR violations. The national plan also put in place the following:

- Use of scanner checks of merchandise at territorial crossing points.
- Support for coordinated follow up inspections/raids on the various distribution networks. Such inspections/raids will involve all available enforcement apparatus (customs, the police and the national guard).
- Tightened control on all types of commercial exhibitions in order to prevent the inclusion of counterfeit imported goods.

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#### IPR Promotion Through Events

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¶4. Local media sources support the national IPR campaign by increasing public awareness. Newspapers are releasing more reports on counterfeit products, piracy and illegal imports. They highlight the risks of consuming counterfeit products and the harm generated on both public health and the economy.

They also publish surveys on the country's weekly markets used by parallel market operators. In February 2006, the private Tunisian TV channel Hannibal broadcast a program that asked whether people were aware of the damage caused to the economy by their purchases of counterfeit products. Most of the people interviewed, clients and sellers, said they are aware of IPR violations but they would not have been able to

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setup a business or buy DVDs, for example, if not for recourse to counterfeit products.

¶5. On April 26, 2006, Tunisia celebrated World Intellectual Property Day. The Tunisian Ministry of Culture delivered a statement stressing the role of culture as one of the pillars for change. Officials from INNORPI (Institut National de la Normalisation et de la Propriété Industrielle) and the ONA (National Handicraft Agency), held a seminar on the protection of Tunisian handicrafts. The aim was to inform and educate artisans about intellectual property protection and the importance of copyrighting and/or patenting their creations. Presenters stressed the role of IPR as a way to increase the economic contribution of the handicraft sector to GDP growth. They focused on the importance of concepts related to geographic indicators and registered designation of origin (RDO). Typical Tunisian handicraft products with RDOs were used as examples (carpets, Chechia -- traditional Tunisian hats, etc). They explained to the audience that by obtaining an RDO these products are protected in both domestic and international markets. An expert on IPR gave a presentation on the World Intellectual Property Organization (WIPO) and on the definition of IPR.

¶6. On April 26, 2006, the Tunisian Association of Inventors held a conference on the utility model. A utility model (aka: petty patent or innovation patent) is an intellectual property right to protect inventions. It is an exclusive right granted for an invention, which allows the right holder to prevent others from commercially using that invention without permission for a certain period of time (usually between 7-10 years). The speaker was a Tunisian lawyer, Mr. Ameur Boudhiba. He explained that the patenting process requires 4 to 5 years, whereas the utility model requires much less time (averaging 6 months). The requirements for a utility model are less stringent than those for a patent. Arguing that the cumbersome Tunisian patent procedures discourage researchers from applying for patents, he urged Tunisian authorities to amend the patent law to include the concept of a utility model.

¶ 7. The National Consumers' Defense Association (ODC), INNORPI, and OTPDA are educating the public on the dangers and economic costs of counterfeit products and are attempting to influence public opinion through periodical newsletters. They also broadcast messages and ads dealing with the parallel market and IPR issues (on national TV and radio channels).

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Enforcement: Signs of Improvement  
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¶ 8. The U.S. Department of Commerce's Commercial Law Development Program (CLDP) and the U.S. Patent and Trademark Office's (USPTO) technical assistance and capacity building programs have had a tremendous affect on and have provoked a positive change in attitude toward IPR among GOT officials. On January 28, 2006, the Tunis Court of Justice found a Tunisian shoe manufacturer guilty of trademark infringement. The manufacturer was producing counterfeit products of a US Company, Caterpillar Inc. (Note: CAT Footwear is a partnership between Caterpillar INC and Wolverine World Wide Inc, which produces industrial footwear using the CAT and Caterpillar trademarks. End Note.) The court ordered the manufacturer to pay a penalty of TND150/per day (USD 113.15) until it stops manufacturing the counterfeit products. In addition, the court ordered the manufacturer to pay all costs related to the seizure and destruction of all counterfeit products bearing Caterpillar trademarks, Caterpillar and CAT.

The court also ordered the manufacturer to pay TND 5000 (USD 3,771.59) sentimental loss, TND 123 (USD 92.78) judiciary fees, TND 300 (USD 226.3) expertise fees and TND 400 (USD 301.72) court cost fees. This encouraging result has led other well-known shoe manufacturers such as Nike, Addidas and Puma to seriously consider suing local counterfeiters of their products in the hopes of achieving similar results.

¶ 9. Official sources indicate that there is new IPR legislation to be included in the 2007 financial law (Tunisia's annual budget plan currently being prepared). This proposed legislation will allow Customs to seize counterfeit goods as soon they are discovered. It will also

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close companies importing and/or marketing counterfeit products for a period of time. Repeated infractions will result in doubling of prescribed penalties. The same law will implement tightened control at the borders against imports from China and Asia to ensure the legitimacy of these products. If/when this legislation is enacted, post will report septel.

¶ 10. The Ministry of Communications Technology has formed a Business Software Alliance Partnership with Microsoft (reftel) and has held several IPR awareness events in the past two years. The Ministry and Microsoft signed an agreement on the fringes of a workshop in Cape Town, organized by Microsoft July 10-11, 2006, on improving the competitiveness of African Countries. Under this agreement all software will be updated with certified Microsoft software and the industry will be regulated. Microsoft will provide support to both the public and private sector in order to develop their competitiveness and strengthen both sectors' complementarity. Future GOT tenders for IT equipment will specify that the equipment be Microsoft compatible. A training program to educate the public on the need to use legitimate software will also be set up.

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Background/Legal Framework  
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¶ 11. Tunisia is a member of the Bern Convention for the Protection of Literary and Artistic Works. The Tunisian Copyright Law is Law No. 36/1994. Although the law was

published in the Official Gazette in 1994, no procedure had been implemented for registering a copyright until now. Protection is granted to authors of literary, artistic and scientific works whatever the value, kind, purpose or means of expression. Generally, the protection is provided for a work whose means of expression is written, recorded, drawn, or via an image or a motion picture. It also includes creative titles and computer software, which is published, acted or displayed for the first time in Tunisia. Works may be protected for the lifetime of the author plus 50 years following his/her death. Software is protected for 25 years from the grant of the copyright. The National Council for Culture is entitled to authorize documentary, translations, educational, cultural or scientific use of a copyrighted product under certain conditions. Copyrights are registered by the Organisme Tunisien de la Protection des Droits d'Auteurs (OTPDA). The Civil Court prosecutes all copyright violations and is entitled to confiscate revenues and counterfeit copies.

¶12. Tunisia is also a member of the November 6, 1925 Hague Agreement for the International Registration of Designs and Industrial Models. Designs and industrial models are protected through registration with INNORPI. A design or an industrial model registration is granted for five, ten or fifteen years starting from the date of filing the application. A registrant for the shorter terms has the option of applying for an extension of the protection period up to the maximum of fifteen years. A registration of a design or an industrial model is subject to cancellation in the event any interested party requests such a cancellation before the competent tribunal, provided that the requestor has also filed an application for the same design or model. The registration, assignment, or cancellation of a design or industrial model are published in the Al-Muwassafat quarterly gazette and entered in the Designs Register. Any infringement or unauthorized use of a registered design or industrial model is punishable under current law.

¶13. Once an application for the registration of a patent is filed, it is examined as to form only. The Tunisian Patent Office does not carry out any examination as to novelty or merit of the invention. A patent application is published in the Al-Muwassafat gazette, together with a summary of the contents. The grant of a patent is also published. Opposition to the grant of a patent may be lodged within two months from the date of publication of the application. There is no provision in the law for appealing the decision of the Registrar. The provisions of the Patent Law in Tunisia stipulate that a patent application should be filed before the invention has been published, or used, or has otherwise received sufficient publicity to allow it to be put

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into practice either in Tunisia or abroad. A patent is valid for twenty years from the date of filing of the patent application. Annuities are payable from the date of filing and due on the anniversary date of filing. A late fine, which may be calculated at the rate of 8% per month is payable when the annuity is paid within the six month grace period. The right to a patent may be assigned or transferred through succession. The assignment of patent applications and granted patents must be made in writing. An assignment shall have no effect against third parties unless it has been entered in the relevant records of the Patent Office. Tunisian law requires use of a patent within four years from the date of filing or three years from the date of granting of a patent. As of the 10th of December 2001, Tunisia became the 115th member state of the Patent Cooperation Treaty (PCT). Any international application made after December 10, 2001 may designate Tunisia.

¶14. GOT issued a new trademark law on April 17, 2001 (No. 36). This law replaced the Tunisian Trademarks and Trade Names law Dated June 4, 1889 and its amendment of 1936. Tunisia follows the international classification of goods and

services (Nice Classification) for the purpose of the registration of trademarks. The revision of class 42 and the creation of classes 43 to 45 was adopted on January 1, 2002. The law contains several TRIPS compliant aspects. These are the protection of colors, sound and collective marks, acknowledgment of well-known trademarks, and the alteration of the registration procedure allowing for examination by Tunisian authorities. The registration is published in Al-Muwassafat for two months, during which time any party can file its opposition to the granting of a trademark. Once the opposition period has passed if no opposition has been filed, the trademark is registered and a certificate of registration is issued. Protection under the law is granted for 10 years from the filing date. Fines levied by court decisions on infringers can range from TND 5,000 (approximately USD 3,800) to TND 50,000 (approximately USD 38,000). The law also requires use of a trademark within a period of five years after it has been granted.

¶15. Comment. The recent efforts by GOT to proactively enforce existing IPR laws and to bring new strengthened legislation into force signal that there has been a positive shift in attitude toward IPR. The national plan seems to be having a very positive effect on IPR enforcement in Tunisia.  
End Comment.

HUDSON